obligors. The reasoning in the decisions favorable to the principal case seems arbitrary and technical, and based upon a questionable conception of the nature of a legacy and of the statute of limitations. It is, therefore, submitted that the rule of the English Chancery and the several concurring American courts including the New York Surrogate, which has thus been set aside by the principal case, would, if followed, effectuate justice more amply and be more in accord with equitable principles.

A. N. H.

EFFECT OF A PROVISION IN A CERTIFICATE OF FRATERNAL BENEFIT INSURANCE THAT SUBSEQUENT BY-LAWS SHALL CONSTITUTE A PART OF THE CONTRACT

A fraternal benefit association which issues certificates payable at the death of the insured is essentially a mutual life insurance company, and is governed by similar principles of law.[1] The distinction between the benefit association and the insurance company is that the policy issued by the latter is the contract, while in the case of the former, the certificate together with the by-laws of the association constitute the contract.[2] However, by-laws which are enacted subsequent to the issuance of the certificate are not binding on the insured unless he has so agreed,[3] and even where there is such a provision there must be some limitation as to the extent to which the insured will be bound.

In *Apitz v. Supreme Lodge*[4] the defendant society issued a certificate of insurance to the plaintiff's testator which contained such a provision. Later the lodge enacted a by-law which provided that any member who disappeared and whose residence was unknown for one year, should stand suspended and that no dues would be received in payment on the certificate. The insured paid eleven annual assessments and disappeared in 1905. The society refused to accept assessments after the lapse of one year. In 1913 the wife as beneficiary brought an action against

[1] *Modern Woodmen of America v. Coleman et al.* (1903) 96 N. W. (Neb.) 154.

[2] Bacon, *Benefit Societies*, sec. 321; *Sabin v. Phinney* (1892) 134 N. Y. 428.

[3] *Peterson v. Gibson* (1901) 199 Ill. 365.

[4] (1916) 113 N. E. (Ill.) 63.

the society on the certificate, claiming recovery by virtue of the doctrine of presumption of death due to the seven years absence of the insured. The society set up the defence that according to the by-law the insured was suspended in 1906, and for this reason, the certificate gave no right of recovery to the beneficiary. The plaintiff claimed that the by-law was unreasonable and did not apply to the certificate issued prior to its enactment. The Supreme Court of Illinois decided that the by-law was reasonable and consequently valid.[5]

The common-law presumption of death which arises after an absence of seven years has been recognized in this country in many states,[6] including Illinois.[7] The question then resolves itself to this issue: Is a subsequent by-law which, by implication, waives the right of the presumption of death, valid and binding on the insured?

It is generally held that by-laws which are contrary to the law of the state,[8] or which are unreasonable,[9] or which change the contract in any essential particular,[10] or which affect the vested rights of the insured,[11] are invalid and do not in any degree affect the certificate. A by-law is usually declared unreasonable if it materially affects the amount to be paid under the contract,[12] or if it lessens a primary duty which one party owed the other. Some courts go even farther and hold that a by-law is unreasonable if it attempts to do more than regulate the administration of

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[5] See also *Baldwin v. Begley* (1900) 185 Ill. 180: "A party cannot claim the right to have a contract remain unaltered when the contract itself provides that it may be changed."

[6] *Davie v. Briggs* (1878) 97 U. S. 628; *Loring v. Steineman* (1840) 42 Mass. 204.

[7] *Reedy v. Millizen* (1895) 155 Ill. 636; *Whiting v. Nicholl* (1867) 46 Ill. 230.

[8] *Woodmen of the World v. Robinson* (1916) 187 S. W. (Tex.) 215.

[9] *Weber v. Maccabees* (1902) 172 N. Y. 490; *Gilmore v. Knights of Columbus* (1904) 58 Atl. (Conn.) 223.

[10] *Smythe v. Knights of Pythias* (1912) 198 Fed. 967.

[11] *Smythe v. Knights of Pythias, supra; Weber v. Maccabees, supra.*

[12] For the effect of by-laws reducing (1) benefits payable to the insured, *Poultney v. Bachman* (1881) 62 How. Pr. (N. Y.) 466; (2) benefits payable to the widow of the insured, *Gundlach v. Mechanic's Association* (1875) 40 How. Pr. (N. Y.) 190; *contra, Fugure v. Mutual Society* (1874) 46 Vt. 362; (3) benefits payable for total disability, *Beach v. Maccabees* (1904) 69 N. E. (N. Y.) 281.

the association and the manner of conducting its business.[13] Courts in other jurisdictions declare that a by-law is unreasonable if it introduces elements into the contract which were beyond the contemplation of the parties when the certificate was issued.[14]

There is, however, another ground on which the decision of this case may be questioned. Subsequent by-laws are invalid which interfere with, or impair the vested rights of the insured.[15] Although the rights of the beneficiary prior to the death of the insured are merely contingent,[16] it is not true of the insured who has a vested right in the contract[17] even though he has no such right in the fund payable at his death. The trend of modern decisions seems to be that the society cannot materially change the terms of contract,[18] for by so doing the contractual rights of the insured are impaired. In the case of *Woodmen of World v. Robinson*[19] the question arose as to the validity of a by-law which explicitly waived the presumption of death. A statute in that state provided for the same presumption of death after seven years' absence as existed at common law. It was held that the by-law, being contrary to the statutory law, was unreasonable and therefore void.

In the principal case, although no statute was involved, it is submitted that this by-law clearly abrogated a common-law right and was in derogation of the primary object for which the insured had paid eleven annual assessments. His vested

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[13] *Ayers v. United Workmen* (1907) 188 N. Y. 280.

[14] *Newhall v. Legion of Honor* (1902) 63 N. E. (Mass.) 1, Justice Holmes said: "The agreement to comply with future by-laws does not mean absolute submission to whatever may be enacted by the company in good faith . . . . and it does not extend to permitting a direct deduction from the sum, which from the face of the certificate any ordinary man would be led to suppose secure."

[15] *Levine v. Knights of Pythias* (1907) 99 S. W. (Mo.) 821.

[16] *Sabin v. Phinney, supra.*

[17] *Ayers v. United Workmen, supra.*

[18] *Smythe v. Knights of Pythias, supra,* Justice Ray said: "Should a clause be inserted in the contract whereby the citizen, a party to such a contract with the government, should in general terms agree to be bound by all laws of the United States then in force or that might be thereafter enacted, would he be held to consent thereby to a change in the terms of his contract made by some special act of Congress? I think such a construction would be unreasonable, oppressive and unconstitutional."

[19] (1916) 187 S. W. (Tex.) 215.

right in this contract, by which he desired to provide for his family at his death was impaired by a by-law to which, even by implication, he never intended to consent. It seems that this by-law falls within the prohibited class as it is unreasonable and an infringement of vested rights.

R. W. D.

THE CHILD LABOR LAW[1]

The Commerce Clause[2] of the Constitution has been invoked by federal legislation for the purpose of stamping out child labor in the states through a denial of the channels of interstate transportation for the product of such labor. That the power of Congress to regulate interstate commerce is exclusive and plenary where it has attempted to deal with problems that promoted the business of carriers as public servants, has become an accepted principle.[3] The real difficulties have arisen in the use made of this power to regulate or prohibit certain forms of commerce.

While the Supreme Court might have ruled that regulation of interstate commerce could not take the form of prohibition, it was early intimated that the power to regulate commerce might be considered as an instrument for other purposes of general

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[1] Act Sept. 1, 1916, c. 432: "No producer, manufacturer or dealer shall ship or deliver for shipment in interstate or foreign commerce any article or commodity the product of any mine or quarry, situated in the United States, in which thirty days prior to the time of the removal of such product therefrom children under the age of sixteen years have been employed or permitted to work, or any article or commodity the product of any mill, cannery, workshop, factory or manufacturing establishment, situated in the United States, in which within thirty days prior to the removal of such product therefrom children under the age of fourteen years have been employed or permitted to work, or children between the ages of fourteen years and sixteen years have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of seven o'clock post meridian, or before the hour of six o'clock ante meridian."

[2] Art. I, sec. 8, ¶ 3.

[3] *Gibbons v. Ogden* (1824) 9 Wheat. (U. S.) 1, 195: "As to such commerce as is national in character and requires uniformity of regulation, the power of Congress is exclusive." *Gloucester Ferry Co. v. Pennsylvania* (1884) 114 U. S. 196; *Minnesota Rate Cases* (1912) 230 U. S. 352, 398.